

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - II**

**CP (IB) 1/MB/2023**

Under section 7 of the Insolvency and  
Bankruptcy Code, 2016 read with Rule 4 of  
the Insolvency and Bankruptcy

(Application to Adjudicating Authority)  
Rules, 2016

*In the matter of*

**Axis Trustee Services Limited**

Having registered office at :- Axis House,  
Bombay Dyeing Mills Compound,  
Pandhurang Budhkar Marg, Worli, Mumbai  
– 400025.

**..... Applicant/ Financial Creditor**

**Versus**

**Reliance Infrastructure Consulting &  
Engineers Pvt. Ltd.**

Having registered office at :- 502, Plot No.  
91/94, Prabhat Colony, Santacruz (East),  
Mumbai – 400055.

**..... Corporate Debtor**

**Order Delivered on :- 08.09.2023**

***Coram:***

**Mr. Anil Raj Chellan**  
**Member (Technical)**

**Mr. Kuldip Kumar Kareer**  
**Member (Judicial)**

***Appearances:***

For the Financial Creditor: Senior Counsel, Mustafa Doctor, a/w  
Adv. Suchitra Valjee, Adv. Riya Kamdar,  
Adv. Rajvi Shah

For the Corporate Debtor: Senior Counsel, Prateek Seksaria, a/w Adv.  
Vrushabh, Adv. Vikrant Nalawade

**ORDER**

*Per:- Kuldip Kumar Kareer, Member Judicial*

1. This Company petition is filed by Axis Trustee Services Limited (hereinafter called as "Financial Creditor") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Reliance Infrastructure Consulting & Engineers Pvt. Ltd. (hereinafter called as "Corporate Debtor") by invoking the provisions of Section 7 Insolvency and bankruptcy code (hereinafter called "Code") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for resolution of an unresolved Financial Debt of Rs. 433,29,03,792/- (Rupees Four Hundred Thirty Three Crore Twenty Nine Lakhs Three Thousand Seven Hundred and Ninety-Two only) as on 06.06.2022.

**The submissions of the Financial Creditor are as follows:**

2. The Financial Creditor subscribed to 6,500 unlisted, rated, redeemable and non-convertible Debentures having face value of Rs. 10 Lakhs each in a single tranche through private placement. As condition precedent to the issuance of Debentures by Corporate Debtor, various Documents all dated 14.12.2017 (Transaction Documents) were executed in favour of the Financial Creditor. In accordance with the terms of the Transaction Documents, the Corporate Debtor was required to always maintain a security cover and in the event the

security cover fell short, the Corporate Debtor was obligated to top up the same by providing additional security.

3. Sometime in February 2019, due to a fall in the security cover, it resulted in the Mandatory Prepayment Event in accordance with the provisions of Clause 9 of the Debenture Trust Deed dated 14.12.2017. Accordingly, a Mandatory Prepayment Notice dated 07.02.2017 was issued calling upon the Corporate Debtor to ensure that all the outstanding amounts were deposited in the designated account.
4. The Corporate Debtor have, on numerous occasions, admitted the default in the payment of outstanding dues. By and under a Deed of Undertaking dated 22.05.2019, the Corporate Debtor acknowledged their liability and also undertook to pay an amount of Rs. 200,00,00,000/- (Rupees Two Hundred Crores Only) on or prior to 30.06.2019.
5. Thereafter, the Corporate Debtor vide email dated 11.07.2019, referred to the Undertaking dated 22.05.2019, and stated their commitment to pay Rs. 200,00,00,000 immediately upon disposal of the entire/residual stake in Code masters. Further, vide an email dated 23.07.2019, the Corporate Debtor recorded its intention to pay the Debenture holder the entire amounts under the Debentures in full by March 2020.
6. On failure to deposit the said amounts, the Financial Creditor issued notice dated 27.07.2020 and Notice for Invocation of Corporate Guarantee dated 27.07.2020 to the Corporate Guarantor calling upon them to pay the total outstanding amount. However, the Corporate

Debtor and the Corporate Guarantors failed to honour the said Notices issued by the Applicant.

7. In light of the above, the Corporate Debtor having defaulted in the repayment of dues, the Financial Creditor filed the present Application for triggering Corporate Insolvency Resolution Process of the Corporate Debtor under the Insolvency and Bankruptcy Code, 2016.

**The Submissions of the Corporate Debtor :-**

8. The Corporate Debtor filed its Affidavit in Reply dated 03.07.2023 through Mr. Santosh Ramchandra Pujare, authorized signatory of the Corporate Debtor and has denied each and every statement, contention and allegation made by the Financial Creditor.
9. The Corporate Debtor has opposed the admission of the above Company Petition and has raised the issue of maintainability on the ground that the documents, as relied upon by the Financial Creditor, are insufficiently stamped and the Financial Creditor has instituted its case on the strength of the said documents. The Corporate Debtor has relied upon the Judgement passed by the constitution Bench of the Hon'ble Supreme Court in *NN Global Mercantile vs Indo Unique Flame & Ors. (CIVIL APPEAL NO(S). 3802-3803 OF 2020)* decided on 25.04.2023, wherein the Hon'ble Supreme Court has held that an unstamped or insufficiently stamped documents cannot be used as evidence. Hence, the documents as sought to be relied upon by the Financial Creditor in the petition, cannot be acted upon in view of the fact that there is no legally enforceable debt due and therefore, the present petition is liable to be dismissed.

10. Further, it is also the contention of the Corporate Debtor that the present petition is not maintainable in absence of a legally enforceable debt and also on account of the arbitration proceedings between the Financial Creditor and the Corporate Debtor which are pending for adjudication.
11. The present petition has been instituted by the Financial Creditor on the strength of a Debenture Trustee Agreement, a Debenture Trust Deed and a Memorandum of Hypothecation, all dated 14.12.2017. The Financial Creditor has also sought to rely on the Corporate Guarantee and an Unattested Share Pledge Agreement (*“Transaction Documents”*).
12. However, the Financial Creditor has failed to disclose that on the basis of the said documents, the Financial Creditor has instituted a Petition under Section 9 of the Arbitration and Conciliation Act, 1996 (*“the Act”*) before the Hon’ble Bombay High Court on 23.10.2020 seeking grant of urgent ad-interim and interim reliefs. On 27.08.2021, the Financial Creditor instituted a Petition under Section 11 of the Arbitration and Conciliation Act, 1996 before the Hon’ble Bombay High Court seeking appointment of Arbitrator.
13. The Corporate Debtor in the above referred proceedings has raised the objection on the insufficiency and unstamped of the Transaction Documents. After completion of the hearing, the Arbitral Tribunal passed an Order dated 27.03.2023 under Section 17 of the Act. In pursuance to the said Order, the Corporate Debtor filed a Commercial Appeal challenging the said Order dated 27.03.2023 and the same is pending for adjudication. Since the subject matter of the proceeding is pending before the Hon’ble Bombay High Court which will decide

whether there exists a legally enforceable debt and whether the Financial Creditor is entitled to enforce a debt on the documents which are insufficiently stamped, the Tribunal would be acting beyond its jurisdiction to consider the alleged debt and default on the basis of the Transactional Documents which in view of the Judgement passed by Hon'ble Supreme Court of India in the matter of *NN Global Mercantile (supra)* are non-est in law.

14. Further, it is also observed that the Transactional Documents as relied upon by the Financial Creditor are executed and stamped in the National Capital Territory of Delhi and have been brought into the State of Maharashtra by the Financial Creditor.

15. The Financial Creditor by seeking to rely on the said documents in its petition before the Hon'ble Bombay High Court had rendered the same liable for stamp duty under the provisions of the Maharashtra Stamp Act, 1958, particularly in view of the provisions of Sections 3, 18 and 19 of the Maharashtra Stamp Act, 1958. The aforesaid provisions would apply in the facts and circumstances of the present proceedings, in as much as the Financial Creditor has relied on the said documents and subjected them to be liable for stamp duty under the provisions of the Maharashtra Stamp Act, 1958. In this regard, it is also pertinent to note that even if the originals of the said documents are in Delhi, the said documents are yet liable to be stamped under the Maharashtra Stamp Act, 1958 having brought copies into the State (including provisions of Section 7(2) of the Maharashtra Stamp Act, 1958) by annexing to the petition filed before the Hon'ble Bombay High Court. The Financial Creditor has produced no proof of payment of stamp duty in the State of Maharashtra for the said documents.

16. Further, it is submitted that the Corporate Debtor is a solvent company and is engaged in day-to day activity, hence the dispute ought to be resolved through Arbitration by the Arbitral Tribunal instead of invoking the jurisdiction of this Tribunal by initiating Insolvency Resolution Process under the Code. Hence the Corporate Debtor prays for the dismissal of the above Company Petition.

**Rejoinder of the Financial Creditor**

17. The Financial Creditor vide its Affidavit in rejoinder dated 28.07.2023 states that the documents on record unequivocally established that the Corporate Debtor owed Financial Debt to the Financial Creditor and the Corporate Debtor has not denied the same. The said fact is corroborated through the acknowledgements of debt as issued by the Corporate Debtor from time to time including the Deed of Undertaking dated 22.05.2019, emails dated 01.07.2019 and 23.07.2019.

18. The Corporate Debtor has not disputed its liability to pay nor has disputed the quantum of debt owed by the Corporate Debtor to the Financial Creditor. The Corporate Debtor has neither denied that the Applicant is the Financial Creditor and the debt is in the nature of financial debt.

19. The Corporate Debtor has raised the issue of the documents being insufficiently stamped. In this regard, the Financial Creditor submits that it is a settled position that in the Insolvency proceedings, the insufficiency of the stamp duty would not operate a bar to the admission of an application under Section 7 of the Code. Moreover, the debt has been clearly established and corroborated from the

documents such as the Balance Sheet, financial statements, information utility and express undertakings and acknowledgements of the Corporate Debtor. The adequacy or lack of stamping of the documents does not preclude the consideration of an Application under section 7 of the Code.

20. Further, the Judgement as relied upon by the Corporate Debtor in the matter of *NN Global Mercantile (supra)* pertains to the admissibility of Arbitration Agreement which was not duly stamped. The Judgement did not rule upon the proposition that the Arbitration Agreement not being duly stamped produced as evidence and admitted by the other party would bind the parties as being duly stamped for the purpose of the said proceedings.
21. Further with regard to the proceedings filed in the Hon'ble Bombay High Court, the said proceedings have no bearing on the proceedings filed under section 7 of the Code in this Tribunal. Mere pendency of the Arbitration proceedings does not tantamount to a bar to initiate proceedings under the Code. The disbursal of monies, acceptance/receipts thereof establishes the existence of a financial debt.
22. Further, as to the stamping of the Transaction Documents, it was the sole responsibility of the Corporate Debtor to ensure that the documents were adequately stamped. With reference to clause 10.9 of the Debenture Trust Deed dated 14.12.2017 it is specifically mentioned that costs arising out of the issuance of the Debentures as to any amount payable under the Law as to Stamp duty on the issuance of the debentures or any amounts payable, shall be solely borne by the Company. Hence it is apparent that the Corporate Debtor, at this

belated stage in order to escape from its liabilities, cannot shift the burden on the Financial Creditor.

23. Further, it is denied by the Financial Creditor that insufficiently stamped documents cannot constitute legally enforceable debt documents ascertain the liability of the Corporate Debtor to the Financial Creditor. The existence of debt and default has been established by the Financial Creditor not only on the basis of the contract between the parties but also by the acknowledgements of the debt by the Corporate Debtor vide the Deed of Undertaking dated 22.05.2019 and also the emails dated 01.07.2019 and 23.07.2019.

24. Hence, as there lies no merits in the contentions raised by the Corporate Debtor and the present Company Petition be admitted and the Corporate Insolvency Resolution Process be initiated against the Corporate Debtor.

### **FINDINGS**

25. We have heard the counsel for the parties and gone through the records.

26. During the course of arguments, it has been contended by the Counsel for the Financial Creditor that in this case the Corporate Debtor has admittedly committed a default of Rs. 650 crores as on 30.06.2019 which is the date of default. According to the Counsel for the Petitioner, the Corporate Debtor issued 6500 unlisted, rated, redeemable and non-convertible debentures having value of Rs. 10 Lakhs each. As per the terms of the transaction documents, the Corporate debtor was required to maintain a security cover. There was a fall in the security cover in February 2019. Accordingly, a mandatory pre-payment notice dated 07.02.2017 was issued but despite that the Corporate Debtor failed to

make any payment. Instead, the Corporate Debtor executed a deed of undertaking dated 22.05.2019 whereby it acknowledged the liability and undertook to make payment on or before 30.06.2019. Eventually notice dated 27.07.2020 to the Corporate Debtor as well as the notice for invocation of Corporate Guarantee of the even date to the Corporate Guarantor was issued. Since no payment was made subsequent to that by the Corporate Debtor, it is a fit case for admission of the Petition u/s 7 of the Code, 2016.

27. On the other hand Counsel for the Corporate Debtor has argued that the contract in this case is based upon debenture trustee agreement and debenture trustee deed which are insufficiently stamped. According to the Counsel for the Corporate Debtor, the cause of action in this case arises on the basis of these two documents which are insufficiently stamped. He has further contended that no Application u/s 7 of Code, 2016 can be filed on the basis of the insufficiently stamped document which are not admissible in evidence nor on the basis of these documents, the liability of the Corporate Debtor can be ascertained or quantified. In support of his arguments, the Counsel for the Corporate Debtor has relied upon *NN Global Pvt. Ltd. V/s Indo Unique Flame Ltd. (Civil Appeal No. 3803 of 2020 decided on 25.04.2023)*, whereby it has been held by the Hon'ble Supreme Court that the parties must address the stamping issue before proceeding further under the Arbitration Act, it was further held that if the Arbitration Agreement was not properly stamped, it could invalidate the entire agreement and any out come resulting from it.

28. We have thoughtfully considered the aforesaid contentions raised by the Counsel for the Corporate Debtor and have also carefully gone through the judgment cited by the Counsel for the Corporate Debtor. No doubt, the Hon'ble Supreme Court has unequivocally held that all documents which are insufficiently stamped and do not strictly comply with the provisions of the Stamp Act, are to be treated as inadmissible in evidence and are therefore unenforceable unless and until the remedy provided in the Stamp Act itself is resorted to cure the defect of insufficient stamping, such documents should not be pressed into service to enforce the rights of the parties under such defective agreement/document. However, in our considered view, in the context of the Insolvency and Bankruptcy Code, 2016, the law laid down by the Supreme Court in *NN Global's case (supra)* cannot be said to be applicable. Proceedings u/s 7 or for that matter u/s 9 of the Code are not recovery proceedings. In fact, the object of the entire Code is to resolve the distressed Corporate Debtors. This Authority is not envisaged to ascertain the liability of the Corporate Debtor on the basis of loan or security agreements and other documents executed by the Corporate Debtor or its Guarantors. Therefore, the admissibility of such document is not supposed to be under challenge or question before this Authority while dealing with Application u/s 7 or 9 of the Code. It is equally true that the preceding u/s 7 are not akin to some recovery suit or proceedings wherein the liability of the Corporate Debtor on the basis of loan or other documents executed by it is to be ascertained. Therefore, inadequacy of any document in terms of requirement of the Stamp Act, in our considered view, cannot be made a ground to non-suit the Petitioner in an Application u/s 7 of the Code. Rather, in such proceedings, this Authority has simply to arrive at a conclusion that the Corporate Debtor has not been able to repay its debts of more than Rs.

1 crore and is no longer in a position to sustain itself financially so much that it requires resolution. Besides, in an Application u/s 7 of the Code, for the purposes of admission, it is not necessary to record findings with regard to the outstanding liabilities of the Corporate Debtor merely on the basis of loan documents only which might have been executed to secure a financial debt. Such findings can be based on many other documents such as NeSL report, bank statements, balance sheets and acknowledgements executed by the Corporate Debtor etc. Therefore, in our considered view, on the basis of the law laid down in *NN Global's* case or on the basis of some documents executed by the Corporate Debtor, which are not sufficiently stamped as per the Stamp Act, the Application u/s 7 cannot be dismissed.

29.No other pointes have been raised by the Counsel for the Corporate Debtor.

30.From a perusal of the record and the documents relied upon by the Applicant, it stands proved that there has been a financial debt in respect of which default has been committed by the Corporate Debtor and further that the Application has been filed within the period of limitation. Therefore, the Application u/s 7 of the Code, deserves to be admitted. It is ordered accordingly in the following terms:

### **ORDER**

a. **The above Company Petition No. (IB) 01(MB)/2023 is hereby admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Reliance Infrastructure Consulting and Engineers Pvt. Ltd.**

b. This Bench hereby **appoints Mr. Rohit Mehra, Registration No: IBBI/IPA-001/IP-P00799/2017-18/11374 as the Interim Resolution Professional having registered office at C/o EY Restructuring LLP, 17<sup>th</sup> Floor, the Ruby, Tulsi Pipe Road, Kasaravadi, Dadar, Mumbai - 400079, email :- [rohitmehra@hotmail.com](mailto:rohitmehra@hotmail.com)**, to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

c. The Financial Creditor shall deposit an amount of Rs. Seven Lakhs towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

d. That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an

owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

i. During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession

and furnish every information in their knowledge to the IRP/RP.

j. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.

**Accordingly, this Petition is admitted.**

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

**Sd/-**

**ANIL RAJ CHELLAN  
(MEMBER TECHNICAL)**

**Sd/-**

**KULDIP KUMAR KAREER  
(MEMBER JUDICIAL)**